



Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

Appeal Ref: APP/U5360/C/23/3326670

41 and 43 Shore Road, Hackney, London E9 7TA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs C Bains against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 29 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission creation of additional hard standing in the rear garden.
 - The requirements of the notice are:
 1. Remove the hard standing that has been created in the rear garden as indicated in Appendix 1 attached to the notice;
 2. Reinstall the planting and grass area to what was previously in situ;
 3. Make good all damage to the property resulting from the removal of the unauthorised works; and
 4. Upon completion of steps 1 to 3, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by the insertion of the words "It appears to the Council that the above breach of planning control has occurred within the last four years" after "4. Reasons for issuing this notice" and varied by:
 - the substitution of the plan annexed to this decision for the plan attached to the enforcement notice;
 - the insertion of the word "additional" prior to "hard standing" in Step 1;
 - the deletion of the word "grass" and the substitution of the word "permeable" in Step 2; and
 - the deletion of two months and the substitution of four months as the time for compliance.
- Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

2. No site visit has been carried out as the appeal can be decided purely on the basis of the submissions.¹ There are no objections from the parties to proceeding in this way.
3. The notice fails to specify that the breach of planning control has occurred within the last four years. However, no issues have been raised by the appellant in this regard, and who is professionally represented. It appears the additional hard standing was 'recently created' according to the grounds of appeal and the appellant states she has chosen not to appeal on ground (a). This is on the basis that her 2023 application to retain the works was refused. It is considered that due thought was given to the other grounds of appeal, including ground (d), given the submissions for grounds (f) and (g). As such, there would be no injustice to either party if I were to direct that the notice was corrected. I shall proceed on this basis.

The ground (f) appeal

4. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the Town and Country Planning Act 1990 (the 1990 Act) and are to remedy the breach of planning control (s173(4)(a)) or to remedy any injury to amenity (s173(4)(b)). In this case the notice requires the removal of the hard standing. The purpose of the notice is therefore to remedy the breach of planning control.
5. In appealing on ground (f) the onus is on the appellant to specify lesser steps, which in their view would overcome the objections to the development. The appellant makes 4 points. She takes issue with the first requirement in that it simply states, "remove the hard standing that has been created", whereas the allegation clearly refers to the "creation of *additional* (my emphasis) hard standing". This is to avoid confusion with the older area of hard standing immediately adjacent to the rear of the buildings. The plan accompanying Step 1 is also indistinct and the appellant suggests the substitution of a better plan, which highlights with a thick outline the unauthorised hard standing to be removed. I agree, and to avoid any confusion I shall direct that the notice be varied to refer to "additional" hard standing and to include a clearer plan.
6. With regard to Step 2, the appellant offers no lesser requirement to replace its deletion and remedy the breach of planning control. The appellant either bought the properties knowing the only access to the garden was via a tortuous route through the basement flats or created the flats without thinking how access to the rear for maintenance purposes could be achieved.
7. The reasons for issuing the notice set out the harm caused by the development, namely the effect of the loss of soft landscaping on the character and appearance of the area, amongst other matters. It is therefore reasonable to require that it be restored. The Council state that the garden was previously "a grassed permeable area" and the appellant was aware that the area contained trees and shrubs. It seems to me the garden could be replanted with similar landscaping including a permeable area but without a grassed area, due to the difficulties of access for regular mowing. I shall therefore

¹ Procedural guide: Enforcement Notice appeals, England, updated 21 December 2022, states at paragraph 8.2.11.5. "A site visit won't be needed for every appeal. It is for the Inspector to decide whether to conduct one."

direct that the notice is varied to delete the reference to “grass area” and replace it with “permeable area”.

8. With regard to Step 3, the requirement only exists for the duration of the removal works and it could not be more specific. For example, if a garden wall is damaged as a result of removing the hard standing, then it is required that it is repaired.
9. With regard to Step 4, the appellant suggests that the hard standing is dug up and stored temporarily on site to be removed in small parcels as and when. This would not be acceptable as it does not remedy the breach of planning control and could prevent the carrying out of Step 2. Step 4 is a necessary and reasonable final step which is why it is included in the notice.
10. As none of the appellant’s points contain lesser steps that would remedy the breach of planning control, the appeal on ground (f) fails.

The ground (g) appeal

11. This ground of appeal is that the two month period given to comply with the requirements of the notice is too short and that this should be increased to six months. However, I consider this would be an excessive and unreasonable amount of time to carry out the straightforward hard and soft landscaping works, even allowing for the inconvenient access. In my view to extend the period to six months would prolong the disruption to the tenants.
12. However, by the time my decision is issued, the compliance period will be in the winter. This is not an ideal time of year to carry out the requirements and, as such, I consider a further two months would ease the mess and disruption to the tenants. The appeal on ground (g) therefore succeeds.

Conclusion

13. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations.

D Fleming

INSPECTOR

Plan

This is the plan referred to in my decision dated: 10 January 2024

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Land at: 41 and 43 Shore Road, Hackney, London E9 7TA

Reference: APP/U5360/C/23/3326670

Scale: not to scale

